

This letter describes the Department's current proposed amendments to its rules regarding bad debts in relation to sales of motor vehicles. See 86 Ill. Adm. Code 130.1960. (This is a GIL).

July 31, 2000

Dear Xxxxx:

This letter is in response to your letter dated May 23, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I have been attempting to learn about possible sales tax refunds for financed accounts that have been written off as a bad debt. We currently file for refunds on repossessed vehicles using a ST-557 and use the ST-556X for refunds of deals that were cancelled. We have heard 'through the grapevine' that we can now file for full refunds on bad debts where we have not recovered the vehicle. However, after calling the IL Dept. of Revenue several times, no one is really sure what and if there are certain qualifying factors involved. We sign all of our contracts with full recourse. We have a few questions regarding this matter. Is there a time limit as to how far back we can go to file these refunds? Are the refunds for the full amount that appears on the ST-556? Are there special forms?

Please send us information regarding this new ruling (if in fact it exists.)

The Department is currently proposing changes to its administrative rules regarding bad debts in relation to sales of motor vehicles and other items. We have enclosed a copy of 86 Ill Adm. Code 130.1960 which is the Department's rules regarding installment contracts and repossessions. The proposed changes set out below will not become effective until they are formally adopted by the Department.

The First Notice was published in the Illinois Register (24 Ill. Reg. 3128 Issue #9). I have set out the proposed changes to subsection (d) below. These proposed rule changes are currently on second notice and may also be viewed on the Department's Internet website located at www.revenue.state.il.us under the heading of legal information/proposed rules/Section 130 ROT (24 Ill. Reg. 3128 Issue #9).

PLEASE NOTE THAT THESE RULES HAVE NOT BEEN ADOPTED AND ARE SUBJECT TO CHANGE.

d) Bad Debts Repossessions

- 1) In case a retailer repossesses any tangible personal property and subsequently resells such property to a purchaser for use or consumption, his gross receipts from such sale of the repossessed tangible personal property are subject to Retailers' Occupation Tax. He is entitled to a bad debt ~~repossession~~ credit with respect to the original sale in which the default has occurred to the extent to which he has paid Retailers' Occupation Tax on a portion of the price which he does not collect, or which he is not permitted to retain because of being required to make repayment thereof to a lending agency under a "with recourse" agreement. Retailers of tangible personal property other than motor vehicles, watercraft, trailers and aircraft that must be registered with an agency of this State, may obtain this bad debt credit by taking a deduction on the returns which they file with the Department for the month in which the Federal income tax return or amended return on which the receivable is written off is filed, or by filing a claim for credit as provided in subsection 130.1960(d)(3), below. Because retailers of motor vehicles, watercraft, trailers, and aircraft do not pay Retailers' Occupation Tax to the Department on retail sales of motor vehicles, watercraft, trailers, and aircraft with monthly returns, but remit the tax to the Department on a transaction by transaction basis, they are unable to take a deduction on the returns which they file with the Department, but may ~~must~~ file a claim for credit with the Department, as provided in subsection 130.1960(d)(3), on a transaction with respect to which they desire to receive the benefit of the repossession credit.
- 2) Retailers who incur bad debt on any tangible personal property, which is not repossessed, may also obtain bad debt credit as provided in subsections 130.1960(d)(1) and 130.1960(d)(3).
- 3) In the case of tax paid on an account receivable that becomes a bad debt, the tax paid becomes a tax paid in error, for which a claim for credit may be filed in accordance with Section 6 of the Retailers' Occupation Tax Act, on the date that the Federal income tax return or amended return on which the receivable is written off, is filed.

Based upon these proposed rule changes, a retailer of motor vehicles, watercraft, trailers, and aircraft who have paid tax on an account receivable that becomes a bad debt may file a claim for credit based upon the unpaid balance

July 31, 2000

of those accounts receivable. This claim may be filed even if the retailer does not repossess the motor vehicle, watercraft, trailer, or aircraft relating to that account receivable.

These types of claims are to be filed on Form ST-557. The Department is currently revising this form to provide for such claims. Until those changes are made, we recommend that retailers use the existing Form ST-557 with some modifications. In Part 3, Column 4 and Column 8 of Form ST-557, please strike out the word "repossessed" and write in "written off for Federal Income Tax purposes" in its place. The date to be entered in Column 4 is the date that the Federal Income Tax return or amended return on which the receivable is written off is filed. The amount to be entered in Column 8 is the amount of the unpaid balance of the contract when written off for Federal Income Tax purposes.

The limitations period for filing claims for credit is set out in Section 6 of the Retailers' Occupation Tax Act. 35 ILCS 120/6. The statute of limitations for filing claims for credit is described in the enclosed copy of 86 Ill. Adm. Code 130.1501(a)(4). The language is somewhat confusing but, boiled down, it means that the statute of limitations is 3 to 3 ½ years and expires in 6 month blocks. For example, on July 1, 2000, the statute of limitations expired for claims to recover taxes that were erroneously paid in the first 6 months of 1997. Please note that the tax is considered to be paid in error in the situations described above on the date that the Federal Income Tax return or amended return on which the receivable is written off is filed.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk

Enc.